

Interstate Oil and Gas Compact Commission (IOGCC) Annual Conference

DATE: November 8, 2020

LOCATION: EPA Region 6 Office

MEETING TIME: 9:30 AM - Noon

EPA Contact: Jonathan Wang, 214-665-2296

I. PURPOSE

YOU will be speaking at the general session at the IOGCC Annual Conference in Santa Fe, New Mexico. Other speakers in the general session include Wayne Christian (TX RRC), Kenneth Wagner (OK Sec of Energy and Enviro), and OK Governor Stitt. Invitations are pending for Senator Luján (D-NM). You will speak for 10-15 minutes in sequence. Audience will include oil and gas regulators from about 20 states, along with representatives from the oil and gas industry, academia, and NGOs. The general session will not be recorded, nor will there be a transcript. If David is amenable, he may field a few questions immediately following his remarks. There will be no pre-submitted questions. Either IOGCC's Vice-Chair Wayne Christian or Second Vice-Chair Ken Wagner will introduce you.

II. PARTICIPANTS

- **YOU**
- Wayne Christian, Commissioner, Texas Railroad Commission, IOGCC Vice-Chair
- Todd Leahy, Deputy Secretary, Energy, Minerals, and Natural Resources of New Mexico
- Kenneth Wagner, Secretary of Energy and Environment, OK, IOGCC Second Vice-Chair
- Kevin Stitt, Governor, Oklahoma, IOGCC Chair
- Steve Tryon, Director, Office of Environmental Policy and Compliance, Dept of Interior

III. AGENDA

Tentative Agenda

IOGCC Annual Conference

Inn at Loretto

Santa Fe, New Mexico

Sunday, November 7 - Tuesday, November 9, 2021

Sunday, November 7th

11:00am-5:00pm	Registration - Living Room
12:30pm-2:30pm	Council of Regulatory Officials - Zuni Room
	<i>Opening Comments</i> David Hardie, Council Chair and Alberta Associate Official Representative
	<i>Welcoming Remarks</i> Adrienne Sandoval, New Mexico Official Representative
	<i>Status of Updated IOGCC Idle/Orphan Well Report</i> Hal Fitch, IOGCC Consultant

	<i>Roundtable Discussion</i>
3:00pm-5:00pm	Council of Oil and Gas Attorneys - Chaco Room <i>Opening Comments</i> Ryan Hoffman, Council Chair and Kansas Associate Official Representative <i>Roundtable Discussion</i>
6:00pm-7:00pm	Opening Reception at Inn at Loretto - Tesuque Room

Monday, November 8th

7:30am-5:00pm	Registration - Living Room
7:30am-8:30am	Breakfast - Chaco Room
8:30am-9:30am	Special Features - Zuni Room <i>Closed Loop Gas Capture</i> Patrick Padilla, Sara Mitchell, and Ryan Yarger, EOG Resources <i>Early Phase Execution for Carbon Sequestration Projects Today</i> Lloyd Hetrick and Ed Steele, Tetra Tech
9:30am-12:00pm	General Session - Zuni Room Wayne Christian, Chairman, Railroad Commission of Texas, IOGCC Vice-Chair Todd Leahy, Deputy Secretary of Energy, Minerals and Natural Resources, New Mexico Kenneth Wagner, Secretary of Energy and Environment, Oklahoma, IOGCC Second Vice-Chair The Honorable J. Kevin Stitt, Governor of Oklahoma, IOGCC Chair Micah Chambers, Legislative Director, Senator Kevin Cramer North Dakota David Gray, Acting Regional Administrator, Region 6, Environmental Protection Agency Steve Tryon, Director, Office of Environmental Policy and Compliance, Dept of Interior Chair's Stewardship Awards
1:30pm-2:30pm	Resolutions Committee Session - Acoma Room
1:30pm-2:30pm	Energy Resources, Research and Technology Committee Session - Zuni Room <i>Opening Remarks</i> Lanny Schoeling, Chair Adam Peltz, Vice-Chair <i>Update on ERRT Portal</i> Kaitlyn Smith, IOGCC Technical Coordinator <i>Summary of 2020-2021 CCUS Webinars and Workshops for Regulators</i> Lanny Schoeling, VP Oilfield Innovation, NeoTek Energy

	<i>Remediation of Orphan Well Sites: Success is in the Science</i> Dr. Kerry Sublette, Professor of Chemical Engineering, University of Tulsa
2:45pm-3:45pm	Environment and Safety Committee Session - Zuni Room <i>Opening Remarks</i> Leslie Savage, Chair Robyn Strickland, Vice-Chair <i>An EPA Regulatory Update-The State of Play</i> Dr. Taimur Shaikh, Senior Policy Advisor-Energy, EPA Region 6 <i>A Preview of the Updated IOGCC TENORM Guidance Document</i> Scott Winters, IOGCC Consultant
4:00pm-5:00pm	Legal and Regulatory Affairs Committee Session - Zuni Room <i>Opening Remarks</i> Reice Haase, Chair Kimberly Wurtz, Vice-Chair <i>Natural Gas Production and Grid Reliability</i> Brian Kroshus, North Dakota Public Service Commissioner <i>Update on Litigation over Federal Executive Orders</i> Brent Mead, Montana Assistant Solicitor General <i>Recent Developments in State Primacy</i> Kimberly Wurtz, Attorney, Wurtz & Associates
5:30pm-7:00pm	Networking Reception at Inn at Loretto - Luminaria

Tuesday, November 9th

7:30am-11:00am	Registration - Living Room
7:30am-8:30am	Breakfast - Chaco Room
8:30am-9:30am	Public, Coastal and Tribal Lands Committee Session - Tesuque Room <i>Opening Remarks</i> Sara Longan, Chair Virginia Hullinger, Vice-Chair <i>Oil and Gas Update from the New Mexico State Land Office</i> Greg Bloom, Assistant Commissioner for Mineral Resources <i>Update from the BLM New Mexico State Office</i> Steve Wells, Associate State Director, BLM [invited] <i>Public Lands and Communities</i> Sara Longan, Deputy Commissioner, Alaska Dept of Natural Resources
9:45am-10:45am	Public Outreach Committee Session - Tesuque Room

	<i>Opening Remarks</i> Travis McCormick, Chair Katie Haarsager, Vice-Chair <i>An Informed Discussion on CO2</i> Greg Wrightstone, Executive Director, CO2 Coalition <i>Advancements in CCUS</i> Erik Oswald, VP of Strategy Development and Advocacy, ExxonMobil
11:00am-12:30pm	Business Session - Zuni Room
12:30pm	Adjourn

IV. PRESS

Closed

V. ATTACHMENT

- Biography
 - Wayne Christian, Commissioner, Texas Railroad Commission, IOGCC Vice-Chair
 - Todd Leahy, Deputy Secretary, Energy, Minerals, and Natural Resources of New Mexico
 - Kenneth Wagner, Secretary of Energy and Environment, OK, IOGCC Second Vice-Chair
 - Kevin Stitt, Governor, Oklahoma, IOGCC Chair
 - Steve Tryon, Director, Office of Environmental Policy and Compliance, Dept of Interior
- Hot Issues
 - Water
 - UIC Issues Related to Oil and Gas Production
 - Texas NPDES Partial Program Authority for Oil and Gas Activities
 - Development of NPDES General Permits for Discharges Resulting from the Hydrostatic Testing of New and Existing Vessels in Region 6 Where EPA is Permitting Authority
 - Status update on ELG plans for CWT/O&G
 - Enforcement
 - Oil and Gas Flyovers in Texas and New Mexico
 - ARD
 - 2015 Ozone NAAQS violations in New Mexico's Permian Basin Area
 - Clean Air Act Section 111 Oil and Natural Gas Proposal
- Inventory of US Greenhouse Gas Emissions and Sinks 1990-2020: Updates Under Consideration for Abandoned Oil and Gas Wells (attached separately)
- Overview: EPA's Proposal to Reduce Climate and Health Harming Pollution from Oil and Natural Gas Industry (attached separately)

Wayne Christian, Commissioner, Texas Railroad Commission



A lifelong conservative businessman, Wayne Christian was elected as our 50th Texas Railroad Commissioner in November 2016.

Since taking office, Commissioner Christian has been appointed by Governor Greg Abbott to the Interstate Oil and Gas Compact Commission (IOGCC) as the Official Representative of Texas. The IOGCC is one of the oldest and largest interstate compacts in the nation, formed over 80 years ago when several states joined together to resolve common issues in the industry without federal intervention.

Christian graduated from high school as valedictorian and went on to graduate from Stephen F. Austin State University with a B.B.A. in General Business in 1973. After college, Christian found success in the music industry with his country/gospel band, the

Mercy River Boys and went on to be finalist for a Grammy Award in 1979.

In 1987, after gaining valuable experience in business, banking and real estate, Wayne Christian opened a financial services business – he is a three-time AIG top advisor nationwide.

In 1996, Christian was elected to the House of Representatives as the first Republican elected from Deep East Texas since Reconstruction after the Civil War. During his time in the House, Christian was a leader for the conservative renaissance in the State of Texas and successfully assisted in the fight to elect a Republican majority in the Texas Legislature.

Christian served as Vice-Chair of Regulated Industries and as a multi-term member of the Energy Resource Committee. On these committees, he had direct oversight of the Railroad Commission and accumulated a strong record of standing for free markets and against burdensome regulations.

Christian will continue to fight to ensure the public is protected from bad actors and that all decisions are consistent and predictable to give a sense of certainty to the thousands of business owners and operators who regularly deal with the Railroad Commission. All regulations should be based on sound science and not speculation.

Todd Leahy, Deputy Secretary of Energy, Minerals and Natural Resources, New Mexico



Todd Leahy was appointed Deputy Secretary of Energy, Minerals, and Natural Resources in January 2019. Prior to that appointment, he served at the New Mexico Wildlife Federation in a number of capacities including Acting Executive Director. Before joining the Federation he served in the General Counsel's Office at the Missouri Department of Natural Resources. He holds a Juris Doctorate in Land Use and Environmental Law from the University of Missouri and a PhD in History of the American West from Oklahoma State University. He has written three books *They Called it Madness: The Canton Asylum for Insane Indians*, *The Historical Dictionary of Native American Movements*, and *The A to Z of Native American Movements*.

He serves as the Tribal Liaison for the Department.

Kenneth Wagner, Secretary of Energy and Environment, Oklahoma



Kenneth Wagner serves as Oklahoma's Secretary of Energy and Environment where he was appointed in 2019 by Oklahoma's new Governor J. Kevin Stitt. In this role, he is responsible for over 30 state agencies, boards, compacts, and commissions as well as advancing policies that encourage economic growth, sensible regulation that fosters responsible energy production, protects natural resources, and ensures clean air, land and water for all Oklahomans.

Previously, Mr. Wagner served as the Senior Advisor to the Administrator for Regional and State Affairs within USEPA's Office of the Administrator where he also served as Director of the Office of Regional Operations. In his duties at EPA, he served as the Administrator's designee to all 10 regions before regional administrators were appointed, and he continued to coordinate all 10 U.S. EPA Regional Administrators and served as an advocate for the regions at headquarters with all the assistant administrators for each national program and the Administrator's office.

In addition to his regional duties, he served as the main point of contact in the Administrator's Office with all 50 states' top environmental regulators and tribal governments. He led the efforts to reform and redefine the federal-state relationship and its efforts around cooperative federalism. Mr. Wagner was helped lead numerous policy initiatives for the Administrator.

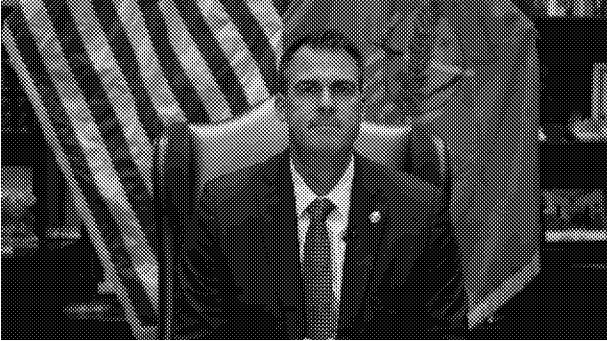
He was appointed and previously served at the Administrator's Designee on the Gulf Coast Eco System Restoration Council, also known as the RESTORE Council. EPA and Acting Administrator Wheeler was appointed by President Trump as Chairman of the RESTORE Council which was responsible for implementing the RESTORE Act and administering billions of dollars of settlement funds that were paid by BP as a result of the Deep Water Horizon oil spill. During his time at RESTORE, Wagner served as the Chair governing all business and executive meetings of the five gulf states and six federal agencies making up the Council.

Mr. Wagner was also closely involved in the Office of Research & Development's initiative to better partner with states to solve every day environmental challenges and make their vast inventory of research more readily accessible for states, tribes and the public. He also coordinated the intra-agency working group to tackle the waste discharges entering the U.S. from our border neighbors in Mexico and assists the Administrator in his goal of bringing certainty to the American people by returning the Agency to its core mission: improving water quality, accelerating land clean ups, modernizing aging water infrastructure and bringing the country back into air attainment by improving air quality.

Before joining the Agency he came from the private sector where he practiced law and held private business interests for nearly 25 years. He was a founding member and managing partner of a successful mid-sized law firm in Tulsa, Oklahoma where he practiced and managed a diverse practice that included commercial, energy and environmental matters. In addition to running a successful law firm, he was involved in numerous successful business and commercial ventures, including being a minority partner in Oklahoma's Triple-A baseball team based in Oklahoma City from 2003 to 2010.

He received his degrees from the University of Oklahoma and the University of Tulsa College of Law.

Kevin Stitt, Governor, Oklahoma



J. Kevin Stitt is the 28th governor of Oklahoma. Governor Stitt is leading the state with a vision to become Top Ten in job growth, infrastructure, education and more.

Governor Stitt is an entrepreneur and businessman who founded Gateway in Tulsa, Oklahoma, in 2000. Starting Gateway with only \$1,000 and a computer, he grew his business into a nationwide mortgage company operating in more than 40 states and servicing more than \$20 billion in residential mortgages. He then decided to tackle the banking industry and in 2018 started the process of merging with Farmers Exchange Bank, a community bank originally founded in 1935 in western Oklahoma. Upon completion of the merger, Stitt established Gateway First Bank, which today is one of the 10 largest banks by assets in Oklahoma with over \$2 billion in assets, 160 mortgage centers across the U.S., and more than 1,700 employees. Gateway is headquartered in Jenks, Oklahoma.

Oklahomans spoke in record numbers that they wanted Stitt to use his business acumen to transform the state. In 2018, he received more votes than any gubernatorial candidate in state history in his first bid for elected office of any kind.

Since taking office, he has worked together with the Legislature to produce historic reform in five of the largest state agencies, allowing him to identify and recruit the best talent to serve in critical leadership positions.

Governor Stitt has taken a groundbreaking approach to his administration by appointing the most female cabinet secretaries in state history and tapping expert advisors from the private sector, including the first chief operating officer in state history.

He is committed to delivering taxpayers more for their money, and his fiscally conservative leadership helped the state build its largest savings account in history, which proved to be prophetic in the face of a significant decline in the oil and gas market.

Stitt is a fourth-generation Oklahoman who graduated from Norman High School and is an alumnus of Oklahoma State University, where he received an accounting degree in 1996. Stitt and his wife, Sarah, have six children and have been married for 23 years.

Steve Tryon, Director, Office of Environmental Policy and Compliance, Dept of Interior

Steve Tryon is the Director of the Office of Environmental Policy and Compliance (OEPC) at the U.S. Department of the Interior. He joined OEPC as its Deputy Director in 2019, after spending nearly 20 years with the Bureau of Land Management, and another seven years with the Department and with the U.S. Fish and Wildlife Service. At BLM, Steve served most recently as Deputy Assistant Director, Resources and Planning, where he led policy development and allocated budgets to about two-thirds of BLM's programs. Prior to that he worked as a Field Manager in Oklahoma and as an Assistant District Manager in Nevada. Before that, he served in a series of jobs in Washington, DC, including acting BLM Budget Officer.

Steve joined the Federal Service in 1993 as Presidential Management Intern. He holds two Master's degrees from the University of Washington and Bachelor's of Science in Foreign Service from Georgetown University.

The Director, Office of Environmental Policy and Compliance, is the principal official responsible for:

- Directing and coordinating Departmental environmental policy to achieve Department-wide compliance with the full range of applicable environmental laws and regulations;
- Providing leadership and guidance for Departmental implementation of the National Environmental Policy Act and for coordinating the Department's review of the environmental and natural resources aspects of non-Interior projects;
- Providing leadership and guidance to ensure the Department achieves its sustainability goals;
- Overseeing the Department's Central Hazardous Materials Fund;
- Serving as the Department's representative on the National Response Team and providing guidance and coordination of Departmental responses for oil and hazardous materials spills; and
- Overseeing the Department's activities to protect and recover natural and cultural resources and historic properties during emergency response actions.

REGION 6 EXECUTIVE SUMMARY

TOPIC: UIC Issues Related to Oil and Gas Production

DATE: October 20, 2021

CONTACT: Jim Brown/Ken Johnson

PURPOSE/ACTION NEEDED: Information Purposes Only

DEADLINE DATE: N/A

BACKGROUND:

The IOGCC meeting will bring together a wide range of participants, including governors, state and federal regulatory officials, oil and gas industry representatives, and non-governmental organizations, to champion the conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment. The production of oil and natural gas, while not directly permitted by Region 6 UIC, results in permitting responsibilities related to disposal of the waste products generated and the current focus on becoming more carbon neutral as an industry.

CURRENT STATUS:

There are several prevalent issues existing related to the production of oil and gas in Region 6:

Historic plugging and abandonment practices are a continuing concern for oil and gas operations as surface purges of saltwater related to permitted disposal wells have occurred in varied locations causing surface damage and community concern for public water supplies;

Increasing seismicity in the Permian basin of W. Texas and New Mexico due to increased production requiring an increase in disposal capacity for produced water has resulted in restrictions on disposal well capacity in several areas and an increased risk of seismic activity in several areas;

Multiple oil and gas operators have met with EPA and various State partners regarding Class VI carbon sequestration due to the favorable pore space and saline aquifers available in our Region. Operators have proposed both land and offshore Class VI projects to help achieve net-zero carbon emissions and obtain IRS 45Q tax credits to offset expenses required. No Region 6 States have rule authorization; and,

Class VI interest is on the rise due to the above mentioned lucrative 45Q tax credit, and with it the increased potential of those Class VI operations encroaching upon existing permitted injection operations. Class VI sequestration operations could affect existing Class I hazardous injection wells, Class II disposal wells, Class V aquifer storage and recovery wells, and potentially interfere with oil and gas production operations in the future. The favorable reservoir characteristics required for a sequestration project are of a similar nature as existing hazardous disposal wells as well as current hydrocarbon production fields, and the existing infrastructure and CO2 sources make proposed projects likely to be near existing injection activity.

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS:

Overlapping projects with differing regulatory authorities have the potential to interfere with one another due to the favorable geologic conditions necessary for each of them. Reservoir trapping of oil and gas reserves and saline aquifers targeted for CO2 sequestration may be stacked upon one another. There is a potential for interference of proposed projects as well as problems such as seismic activity, mobilization of hazardous wastes, or contamination of productive zones.

TECHNICAL CONCERNS:

- Lack of State authorization for the Class VI rule complicates permitting and coordination due to

multiple permit authorities (TX for example, has their own state Class VI rules even though they don't have primacy yet for the federal program), and overlapping jurisdictions including cross border projects (boundaries of subsurface geologic formations do not neatly follow state jurisdictional boundaries and can straddle multiple states and EPA Regions).

- Class VI permitting requirements including construction standards for artificial penetrations and corrective action for existing wells may make heavily drilled areas problematic.
- Projects in areas with numerous faults and induced seismicity will be difficult, and multi-phase models will be very complicated to demonstrate permanent sequestration.
- Lack of detailed information available to regulatory agencies makes surface purges difficult to attribute to possible sources.

Ex. 5 Deliberative Process (DP)

REGULATORY/LEGAL REQUIREMENTS:

- The question of pore space ownership differing from surface rights or mineral rights is not consistent from State to State or may not be defined at all. A CO2 sequestration project may need to negotiate not only surface agreements for equipment, but pore space rights and mineral rights prior to beginning a project.
- Class VI permitting requirements are very detailed and implementation guidance is voluminous and still under production and revision. There are only 2 approved projects in the US, none in Region 6.
- Offshore sequestration of CO2 has unclear regulatory authorities for permitting.

COMMUNITY CONCERNS:

- Some public interest groups view policies promoting carbon capture, whether for EOR or permanent storage as subsidizing the continued development and use of fossil fuels, which they oppose, while some support tax credits as a mitigation strategy to reduce CO2 emissions into the atmosphere.
- Unconventional Oil and Gas production (e.g., fracking) has resulted in increased activity affecting the quality of life including transportation, surface contamination, and potential threat of increased earthquake frequency.
- There are concerns of new carbon capture projects affecting existing oil and gas production, existing water supplies, or existing hazardous waste disposal wells since the attractive reservoirs tend to be in the same locations.
- There are community concerns the States should not be authorized for additional Class VI permitting when surface purges from abandoned or improperly plugged wells from Class II operations still happen.

RECOMMENDATIONS:

Emphasize the cross programmatic and cross agency impacts of oil and gas production and any proposed projects for reducing carbon footprints, and the need to reconcile the geologic requirements of projects with the difficult and extensive regulatory permitting requirements of Class VI projects. The existence of other water supply wells, injection wells of other permitting classes, and the long term monitoring and movement of injected materials must be accounted for.

TOPLINE MESSAGING

- 45Q Tax credits are driving a significant interest in pursuit of Class VI geo-sequestration projects in Region 6.
- The technical requirements of the Class VI CO2 sequestration regulations will put a burden on existing permitting staff and make permitting time frames long.
- Environmental groups may desire carbon reducing/neutral projects but are hesitant to support them if they prolong the production of fossil fuels as an energy source.

- Areas with numerous faults, reservoirs with basement rock connection or containment, and active seismicity may be poor candidates for long term sequestration of CO₂.

REGION 6 EXECUTIVE SUMMARY

TOPIC: Texas NPDES Partial Program Authority for Oil and Gas Activities

DATE: October 21, 2021

CONTACT: Mark Hayes, X2705

PURPOSE/ACTION NEEDED: For Information

DEADLINE DATE: N/A

BACKGROUND:

- On January 15, 2021, the Regional Administrator for the United States Environmental Protection Agency (EPA), Region 6 approved the request of the State of Texas' Partial National Pollutant Discharge Elimination System (NPDES) program authorization for discharges from produced water, hydrostatic test water and gas plant effluent, hereafter referred to as oil and gas discharges, within the State of Texas.
- In response to HB 2771, signed by Governor Abbott on June 14, 2019, that transferred jurisdiction for permitting of oil and gas produced water, hydrostatic test water, and gas plant effluent from the Railroad Commission (RRC) to TCEQ and requiring TCEQ to submit a request to supplement or amend the approved TPDES program to include authorization to permit discharges of produced water, hydrostatic test water and gas plant effluent, in accordance with CWA § 402(n)(3), the EPA received a letter from the Governor Abbott, October 12, 2020, seeking approval of the State of Texas authorization of the NPDES oil and gas program.
- A virtual public meeting and hearing were held January 5, 2021. 156 written comments were submitted to the EPA, of which 130 were similar in nature expressing concerns of the TCEQ's program authorization.
- The TCEQ was previously granted authorization of the NPDES program September 1998 for discharges from POTWs and non-POTWs, activities related to stormwater, and activities from industrial sector with direct discharges to POTWs (pretreatment program).
- The TCEQ also revised the 1998 MOA (2020 Memorandum of Agreement, signed June 2020.)

CURRENT STATUS:

- The TCEQ is developing and undergoing the reissuance process of the general permits (previously under the authority of the EPA) for on-shore and off-shore activities (TXG330000 and TXG260000).
- No other permits related to oil and gas activities (since authorization) has been submitted to the EPA for review.

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS:

- None.

TECHNICAL CONCERNS:

Any other discharges associated with oil and gas exploration and production would remain under the jurisdiction of the RRC. Since not all discharges at some facilities would transfer, there is a possibility that a single facility could require both an EPA and a TPDES permit.

REGULATORY/LEGAL REQUIREMENTS:

- The TCEQ's NPDES partial program authorization for oil and gas activities is in accordance with CWA Section 402(n)(3).

COMMUNITY CONCERNS:

- EPA received 156 written comments (130 of which were similar in nature, expressing concerns with the TCEQ's authorization.
- EPA conducted informal consultation/coordination virtual conference calls with tribal nations, and received no comments and/or objections. Therefore, a formal tribal consultation was not conducted and/or required.

RECOMMENDATIONS:

- Continue to coordinate and provide guidance to the TCEQ as permits are being developed and submitted for the EPA's review.

REGION 6 EXECUTIVE SUMMARY

TOPIC: Development of NPDES General Permits for Discharges Resulting from the Hydrostatic Testing of New and Existing Vessels in Region 6 Where EPA is Permitting Authority

DATE: October 19, 2021

CONTACT: Maria Okpala, X 3152

PURPOSE/ACTION NEEDED: Informational

DEADLINE DATE: October 20, 2021

BACKGROUND: These new National Pollutant Discharge Elimination System (NPDES) general permits would authorize discharges resulting from the hydrostatic testing of new and existing vessels in New Mexico, Oklahoma, Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana. The draft permit has the following requirements for hydrostatic test water discharges from new vessels: limits on oil and grease, total suspended solids (TSS), pH, and total residual chlorine (TRC). For hydrostatic test water discharges from existing vessels, the permits have the same limits as for new vessels (limits on oil and grease, TSS, TRC, and pH as well as limits on total organic carbon (TOC), benzene, and total benzene toluene ethyl benzene & xylene (BTEX). TRC limits would apply to both new and existing vessels if any portion of the test water is chlorinated or is from a municipal water source due to drinking water residual chloring requirements and potential for chlorine toxicity. Availability of a general permit could reduce the lead time for permit authorization from 180 to 30 days and reduce the workload for issuance of individual permits.

CURRENT STATUS: The general permit would not cover the States of Arkansas, Louisiana, and Texas because the States have NPDES authorization for these discharges

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS: None

TECHNICAL CONCERNS: None

REGULATORY/LEGAL REQUIREMENTS: The limitations and conditions included in the draft general permit are based on best professional judgment, as required by CWA section 402(a)(1), because national guidelines for discharges from the hydrostatic testing of vessels have not been promulgated. Applicants are required to certify to the endangered species criteria specified in the proposed general permit. Applicants who cannot certify to one of the endangered species eligibility criteria cannot submit a Notice of Intent (NOI) to gain coverage under the general permit; instead, they must apply to EPA for an individual NPDES permit. In addition, facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 U.S.C. Sections 470 et seq., are not automatically covered under this permit. Prior to submitting a Notice of Intent (NOI), applicants must determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (e.g., they are “eligible for listing”) in the path of the discharge(s) or in the vicinity of any construction of treatment systems related to the discharge(s), that may be affected by discharge or discharge-related activities.

COMMUNITY CONCERNS: None

RECOMMENDATIONS: The GP will go through the Office of Management and Budget (OMB) for significance review that could delay the issuance process. National Environmental Policy Act (NEPA) review is not required because the discharges would not meet definition of a “new source”. The Region is initiating dialogue with EPA headquarters, the State of New Mexico and Indian Country representatives within the States of Texas, Oklahoma, New Mexico, and Louisiana. The GP is expected to be published in the Federal Register early Spring of 2022, with final issuance in Summer of 2022.



Workforce Diversity, Environmental Stewardship, Character, Accountability, Respect, Excellence

REGION 6 EXECUTIVE SUMMARY

TOPIC: Status update on ELG plans for CWT/O&G

DATE: October 19, 2021

CONTACT: Maria Okpala, X 3152

PURPOSE/ACTION NEEDED: Informational

DEADLINE DATE: October 22, 2021

BACKGROUND: Current Federal Regulations prohibit discharge of produced water, including fracking flowback, to inland waters of the U.S (40 CFR 435, Subpart C), except west of the 98th meridian which allows discharge for beneficial uses (Subpart E - Agricultural and Wildlife Water Use Subcategory). Operators have historically met zero discharge by reinjection (UIC), recycling/reuse in subsequent hydraulic fracturing operations, or by sending to Centralized Waste Treatment (CWT) facilities. POTWs and CWTs are the only of these options that may ultimately result in discharges to surface water.

In the Final Effluent Limitation Guideline (ELG) Program Plan 14, EPA announced that it was initiating rulemaking to revise definitions in the CWT ELGs (40 CFR Part 437) to increase flexibility for CWT facilities that treat, and discharge produced water from oil and gas extraction.

Ex. 5 Deliberative Process (DP)

Ex. 5 AC/DP

CURRENT STATUS: EPA intends to take no further action on oil and gas extraction wastewater management and will not move forward with revisions to the CWT ELGs at this time. The agency has determined that the current regulations provide sufficient flexibility for managing produced waters at the national level at this time.

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS: Produced water and hydraulic fracturing including flowback generate large quantities of water and often contain high concentration of Total Dissolved Solids (TDS), various organic and inorganic chemicals, metals and naturally occurring radioactive materials.

TECHNICAL CONCERNS: Existing Part 437 regulations for CWT do not have treatment in place for some

Ex. 5 AC/DP

The current regulation also limits the ability of produced water to be discharged under the current CWT ELG. For example, to treat and discharge produced water subject to the CWT ELG, the wastewater must be from off-site, and not all wastewaters can be delivered via pipeline.

REGULATORY/LEGAL REQUIREMENTS: CWT Facility is defined at 40 CFR 437.2(c). There are

Ex. 5 AC/DP

Ex. 5 AC/DP

COMMUNITY CONCERNS: None

RECOMMENDATIONS: The Region recommends initiating rulemaking to revise Part 437.



Workforce Diversity, **E**nvironmental Stewardship, **C**haracter, **A**ccountability, **R**espect, **E**Xcellence

REGION 6 EXECUTIVE SUMMARY

TOPIC: Oil and Gas Flyovers in Texas and New Mexico

DATE: October 19, 2021

CONTACT: Darrin Larson

PURPOSE/ACTION NEEDED: For Information

DEADLINE DATE: None

BACKGROUND:

In the last decade, the rapid growth in the oil and gas sector outpaced EPA's ability to identify emission releases using traditional on-site inspections. In response to this challenge, EPA Region 6 began conducting helicopter flyovers using optical gas imaging (OGI) to survey large areas of oil and gas activity. Videos from flyovers conducted from 2013 - 2020 have captured significant hydrocarbon emissions in the Eagle Ford Shale in Texas, and the Permian Basin in Texas and New Mexico.

Flyovers allow EPA to survey large areas for noncompliance, and in the most recent flyovers, in 2019 and 2020, we surveyed over 33,000 flares, tanks, other sources. EPA Region 6 focused on compliance assistance in the first years of the flyovers. We provided OGI videos to companies and requested that they address the observed emissions and report on the steps taken to return to compliance. Starting in 2018, we began enforcing SIP-approved permit violations through administrative settlements, concluding 51 settlements for the 2018 and 2019 flyovers. These settlements required the company to inspect their facilities and take steps to improve operations and maintenance. Where there were a larger number of violations, EPA required companies to conduct engineering assessments to determine appropriate corrective actions. Companies operating without permit authorization paid penalties.

Because of on-going collaboration with TCEQ and NMED, the states have supported EPA's approach to escalating enforcement, from compliance assistance to administrative settlements, to penalty settlements, to design-focused information requests that may lead to judicial referrals.

CURRENT STATUS:

EPA Region 6 is currently addressing noncompliance identified in the flyovers of the Permian Basin in Texas and New Mexico and San Juan Basin in New Mexico conducted from August 25 through October 15, 2020. In response to continued noncompliance, we are seeking penalties and more extensive injunctive relief, including third-party audits, for emissions that violate SIP-approved permits and/or NSPS OOOOa. Companies with a history of noncompliance are being asked to pay larger penalties. To date, we have concluded 8 administrative settlements with penalties totaling \$731,932.

Through the end of FY21, administrative settlements resulted in over 29 million pounds of VOC emissions reduced and over 440,000 pounds of H2S emissions reduced.

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS:

Southeastern New Mexico is experiencing an upward trend of air quality issues (ozone) associated with significant oil and gas activities in the area. Similarly, there are increased emissions in the Permian Basin portion of Texas.

TECHNICAL CONCERNS:

None.

REGULATORY/LEGAL REQUIREMENTS:

The Clean Air Act and regulations promulgated thereunder.

COMMUNITY CONCERNS:

The flyovers focus on areas with ozone exceedances, including communities with EJ concerns in the San Antonio, Texas, area, the Permian Basin in Texas and New Mexico, and the San Juan Basin, New Mexico.

RECOMMENDATIONS:

Work closely with state partners to address noncompliance.

REGION 6 EXECUTIVE SUMMARY

TOPIC: 2015 Ozone NAAQS violations in New Mexico's Permian Basin Area

DATE: October 20, 2021

CONTACT: Sherry Fuerst, x-6454

PURPOSE/ACTION NEEDED: Informational. Status update on 2015 Ozone NAAQS violations in New Mexico's Permian Basin area in preparation on the Oil and Gas Commission Annual Meeting.

DEADLINE DATE: October 21, 2021

BACKGROUND:

- On October 1, 2015, EPA revised the 8-hour primary national ambient air quality standard (NAAQS) for ozone from 0.075 parts per million (ppm) to 0.070 ppm.
- On November 16, 2017, EPA designated the Permian Basin areas of Texas and New Mexico as attainment/unclassifiable for the 2015 ozone NAAQS. The two regulatory monitors in the Permian Basin were meeting the 2015 Ozone NAAQS at that time (2014-2016 DV 67 ppb).
- On March 2, 2021, WildEarth Guardians (WEG) petitioned EPA Region 6, requesting the following:
 - **Ozone NAAQS Nonattainment Designation for SE New Mexico and neighboring counties in Texas** – EPA should redesignate the following four (4) counties located in the Permian Basin of southeast New Mexico as nonattainment for the 2015 Ozone NAAQS, due to ongoing violations of the standard. WEG cited the following for increasing or worsening ozone levels:
 - Prolific oil and gas activity in the Permian Basin;
 - Continued permit issuance by the New Mexico Environmental Department (NMED) in the Permian Basin area while design values at local regulatory air monitors for ozone are exceeding the NAAQS;
 - Documented violations of the ozone NAAQS at the Carlsbad monitor;
 - Environmental Justice concerns over the impacts to public health and the environment from exposure to elevated ozone levels.
 - **Call for the Revision of the New Mexico SIP (“SIP Call”)** – EPA should find that New Mexico's federally approved State Implementation Plan (SIP) is failing to attain and maintain NAAQS under the CAA, and EPA should issue a SIP call for the revision of the New Mexico (NM) SIP, pursuant to Section 110(k)(5) of the CAA. In support, WEG asserted:
 - WEG asserted EPA has a legal duty to call for the revision of the New Mexico SIP under Section 110(k)(5) of the CAA.
 - Ozone monitors in the Permian Basin of New Mexico currently have recorded design values in excess of the 2015 ozone NAAQS.
 - The New Mexico SIP is failing to ensure that the NMED does not permit stationary sources that cause or contribute to violations of the NAAQS.
- On August 30, 2021, WEG sent EPA a Notice of Intent to Sue (NOI) and intends to file suit against EPA to compel a response to the petition once the 180-day period has run.

CURRENT STATUS:

- The design value for the Carlsbad monitor has steadily risen from 68 ppb in 2017 to 78 ppb for 2020 and currently projected as 77 ppb for 2021. These values are similar to those in the Houston ozone nonattainment area.
- EPA is evaluating the claims made in the WildEarth Guardians petition including:
 - Reviewing New Mexico's minor New Source Review permits and the General Construction Permit for Oil & Gas.
 - Ozone designation of the Permian Basin.
- New Mexico just held a public hearing for the (September 20 -October 1, 2021) “Ozone Precursor Rule for the Oil & Gas Sector” which, if adopted, provides for more stringent emission controls at some oil and gas facilities. Expectation is for the EIB to take action in the spring of 2022.
- EPA is evaluating areas designated attainment for the 2015 Ozone NAAQS that are no longer meeting the NAAQS.

TECHNICAL CONCERNS:

•
•
•

Ex. 5 AC/DP

COMMUNITY CONCERNS:

- The sources with the highest emissions of NO_x and VOC from oil and gas activities are located in the following New Mexico and Texas counties:
 - Eddy and Lea (NM), and
 - Culberson, Reeves, Loving, Andrews, Gaines, Winkler, and Yoakum (TX).
- Chaves, Eddy and Lea counties are predominantly Hispanic and Latino, and the poverty rates are significantly higher than the state average.
- The low-income population in Reeves, Gaines, and Winkler Counties is larger than the state average.

RECOMMENDATIONS:

Highlight that there is a need for reduced NO_x and VOC emissions in the area.

REGION 6 EXECUTIVE SUMMARY

TOPIC: Clean Air Act Section 111 Oil and Natural Gas Proposal

DATE: October 21, 2021

CONTACT: Taimur Shaikh

PURPOSE/ACTION NEEDED: For Information

BACKGROUND:

On September 14, 2020, EPA published the 2020 Policy Rule to amend the New Source Performance Standards (NSPS) for the Oil and Gas source category under CAA section 111(b). On September 15, 2020, EPA published the 2020 Technical Rule to further amend the NSPS. On June 30, 2021, a resolution to disapprove the 2020 Policy Rule under the Congressional Review Act was enacted. The effect of the resolution is to reinstate the requirements of the 2012 and 2016 rules for methane and volatile organic compound (VOC) emissions from the Oil and Gas source category that were rescinded in the 2020 Policy Rule. These reinstated requirements include the 2016 standards for methane from sources in the production segment through the transmission and storage segment, as well as standards for certain sources of VOC in the transmission and storage segment. We developed impact analyses that include emissions reductions, costs, benefits, and economic impacts. In addition,

Ex. 5 Deliberative Process (DP)

CURRENT STATUS:

We completed the Final Agency Review, and the proposed rule package has been returned to OMB. We anticipate imminent publication in the Federal Register.

ENVIRONMENTAL/PUBLIC HEALTH CONCERNS:

Oil and Gas methane emissions were estimated to be 197 million metric tons of CO₂ equivalent. This represents approximately 30% of the total US methane emissions in 2019 based on the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990 – 2019.

REGULATORY/LEGAL REQUIREMENTS:

- On January 20, 2021, President Biden issued Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” The EO instructs EPA to consider proposing:
 - By September 2021, a rulemaking to reduce methane emissions in the oil and natural gas sector by suspending, revising, or rescinding previously issued new source performance standards (NSPS).
 - By September 2021, new regulations to establish emissions guidelines (EG) for states to set standards of performance for emissions from existing operations in the oil and natural gas sector.

COMMUNITY CONCERNS:

- Many communities, tribes, Congressional representatives, non-industry advocacy groups, technology vendors, health professionals, financial investors, and power-sector companies have relayed their support regarding new and existing methane standards across the industry. Many states, but not all, have been supportive of the rulemaking.
- Those states that have had oil and gas regulations in place may be concerned about how their existing

programs will interact with the Emission Guidelines.

- We have heard from states that they are concerned about the timing of state plan submittals and have advocated for EPA to offer and flexibilities with their state plan development.
- We have had some negative reactions from small businesses and related trade associations due to costs associated with new technologies for finding and mitigating large emission events.

RECOMMENDATIONS:

Ex. 5 AC/DP



Workforce Diversity, Environmental Stewardship Character, Accountability, Respect, Excellence

